

IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

Linda Griffith,	)	
	)	C.A. No. U508-02-0131
Plaintiff,	)	
	)	
v.	)	
	)	
John DelValle,	)	
	)	
Defendant.	)	

September 3, 2009

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Schmittinger & Rodriguez, Esq.  
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Mr. John DelValle  
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Pro Se Defendant

**DECISION AFTER TRIAL**

Linda Griffith (“Plaintiff”) has brought this civil action against John DelValle (“Defendant”) for breach of contract. Following trial on this matter, the Court finds for the Plaintiff and against the Defendant for breach of contract and enters judgment in the amount of \$5,383.40 plus pre and post judgment interest at the legal rate, reasonable attorneys’ fees and costs.

**FACTS**

On or about November 14, 2005, the Plaintiff entered into a one year written lease agreement (“Lease”) with the Defendant for a cottage located in Kent County, Delaware.

The terms of the Lease were that in lieu of \$700.00 per month rent, the Defendant would provide labor and materials to make improvements to the property as listed in the Lease. The Plaintiff lived out of state and relied on the Defendant's statements regarding the amount of work being done on the property.

In October 2007, the Plaintiff visited the property and was upset to find that very little of the contracted work had actually been done. The Plaintiff contacted the Defendant and told him what needed to be completed in order to avoid eviction from the premises. The Defendant failed to complete the work and left the premises on or about January 15, 2008. In order to re-let the premises, the Plaintiff had to winterize the pipes to stop various leaks that had occurred and caused water damage. The cost of winterization was \$283.40. Additionally, the Plaintiff incurred \$200.00 in expenses for removal of trash following the Defendant's departure from the premises. Both parties agree that the Defendant only completed 25% of the work that he was required to complete under the Lease.

The Plaintiff seeks damages in the amount of \$6,300.00, as rent for the Lease from November 15, 2005, until November 15, 2006, as this amount represents 75% of \$8,400.00, which would be the total rent paid for the year at \$700.00 per month. Additionally, she is seeking reimbursement for the winterization of the premises and the removal of trash. Furthermore, she seeks the reimbursement of reasonable attorneys' fees as permitted pursuant to the Lease.

Although the Defendant admits that he only completed about 25% of the work required under the Lease, at the conclusion of trial, he argued that this provision of the Lease was a violation of the Delaware Landlord-Tenant Code. Therefore, the agreement

was illegal and unenforceable. Additionally, he requests an offset on any amounts due from him as heat was not available for two months at the beginning of the Lease. He agrees, however, that he owes the \$200.00 for trash removal.

## **DISCUSSION**

### **A. Affirmative Defense of Illegality of the Lease.**

At the conclusion of trial, the Defendant argued that the condition of the Lease requiring him to complete work on the premises in lieu of rent was illegal pursuant to the Delaware Landlord-Tenant Code at 25 *Del. C.* §5305(c). Without discussing the merits of the Defendant's position, the Plaintiff contends that this argument may not now be raised for the avoidance of her claim as the Defendant did not assert it as an affirmative defense in his response to the Plaintiff's complaint.

Court of Common Pleas Civil Rule 8(c) provides that in any pleading to a preceding pleading, a party "shall set forth affirmatively" illegality and any other matter constituting an avoidance or affirmative defense. If an affirmative defense is not so pled, it is waived. *Abdi v. NVR, Inc.*, 2007 WL 2363675, at \*2 n.12 (Del. Super. Ct.) (citing *Long v. Wilson*, 393 F.3d 390, 401 (3d Cir. 2004)). Since the Defendant did not raise the illegality of the Lease as a defense to the Plaintiff's claims until his closing argument at trial, this defense was waived and no further analysis of the issue will be made by the Court.<sup>1</sup>

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<sup>1</sup> Although the Defendant is a *pro se* litigant, he is held to the same standard as any other litigant when it comes to the pleading and defense of his case. *Laboy v. State*, 846 A.2d 238 (Table) 2003 WL 2245707 (Del. 2003).

**B. Breach of the Lease.**

**1. Damages**

Both parties have agreed that the Defendant only completed 25% of the work that he had to complete pursuant to the Lease. In the Lease, they also agreed that rent would be valued at \$700.00 per month. Since the Defendant only completed 25% of the work necessary under the Lease for a twelve month period, the Plaintiff is entitled to payment for the value of rent for the 75% of the work that was not completed for the year. Thus, the amount of rent owed to the Plaintiff by the Defendant for the non-completed work is \$6,300.00. Additionally, the Plaintiff is entitled to the reimbursement of \$283.40 for the winterization of the cottage and \$200.00 for the removal of trash after the Defendant left the premises.

**2. Offsets**

Under 25 *Del. C.* §5307(b)(c), if a landlord fails to provide adequate heat to maintain a temperature of not less than 62 degrees Fahrenheit for a rental unit, then rent shall abate for that time period. While 25 *Del. C.* §5307 requires notice to the landlord of lack of heat, the landlord in this case was always aware of the fact that there was no heat for the premises for the two months in question. She had represented to the Defendant that heat would be available in a week. The Plaintiff contends that the Defendant is not entitled to the defense of no heat because this issue was not raised in his response to the Plaintiff's complaint. However, the pretrial stipulation to which both parties agreed does raise the issue of no heat. In *Vaughn v. Rispoli*, 804 A.2d 1067 (Table), 2002 WL 1874909, at \*2 (Del. Super. Ct.), the Delaware Superior Court, in citing Superior Court Civil Rule 16, which mirrors Court of Common Pleas Civil Rule

16, held that “[a]t the court’s discretion, the parties may amend pleadings at a pretrial conference and a pretrial order ‘shall control the subsequent course of action.’”

Therefore, this Court recognizes the offset and holds that two months worth of rent shall be deducted from the rent due to the Plaintiff for the lack of heat provided to the cottage for two months time. Since the rent was valued at \$700.00 per month, this offset equates to \$1,400.00.

### **CONCLUSION**

As a result of the Court’s finding of fact, which is based upon the entire record, including all direct and circumstantial evidence, and the references therefrom, and the Court’s above-referenced conclusions of law, the Court awards the Plaintiff, Linda Griffith, the amount of \$5,383.40, plus interest at the legal rate from January 15, 2008, court costs and reasonable attorneys’ fees against the Defendant, John DelValle, for his breach of the lease agreement he had with the Plaintiff.

**IT IS SO ORDERED THIS 3<sup>RD</sup> DAY OF SEPTEMBER, 2009.**

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**CHARLES W. WELCH**  
**JUDGE**